JUN 26 1967
JOHN F. DAVIS, CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

No. 291

METHODIST RIVER OAKS APARTMENTS, INC.,
Petitioner,

vs.

CITY OF WACO AND LA VEGA INDEPENDENT SCHOOL DISTRICT OF McLENNAN COUNTY, TEXAS,
Respondents.

APPLICATION FOR WRIT OF CERTIORARI OF PETITIONER, METHODIST RIVER OAKS APARTMENTS, INC.

BEARD & KULTGEN
P.O. Box 529
Waco, Texas, 76703
THOMAS P. BROWN, III
1008 20th St., Northwest
Washington, D. C.
Attorneys for Petitioner

E. L. MENDENHALL, INC., 926 Cherry Street, Kansas City, Mo. 64106, HArrison 1-3030

TABLE OF CONTENTS

(a) Reference to Opinions Delivered in the Courts Below 1

(b) Statement of Grounds on Which Jurisdiction of the Supreme Court Is Invoked 2

(c) Questions Presented for Review 2

(d) Constitutional Provisions and Statutes Which the Case Involved 2

(e) Statement of the Case (Which Specifies How and When Federal Questions Were Raised) 3

(f) Argument 7

(g) Appendix A—Opinion of the Court of Civil Appeals of the Tenth Supreme Judicial District of Texas A1

(h) Appendix B—Judgments of the Trial Court A4

(i) Appendix C—Text of Constitutional and Statutory Provisions A12

Statutes

Act of June 25, 1948, c. 646, 62 Statutes 929, 28 U.S.C. 1257(3) 2

Amendment XIV, Section 1, Constitution of the United States 2, 3, 11

Art. 8, Sec. 2, Texas Constitution 3

Art. 7150(7), R.C.S. Texas 1925, Amended by Acts of Texas Legislature, 1961, 57th Legislature, page 1087, Chapter 487, Sec. 1 (Art. 7150-7), V.A.T.C.S. 3, 7, 9

Housing Act of 1949, Acts of July 15, 1949, c. 338, Sec. 2, 63 Statutes 413, Title 42, U.S.C., Sec. 1441 ..... 3, 11, 12

Sec. 221 (d) 3, National Housing Act, Title U.S.C., Sec. 1515(1) 3, 12

Cases

City of Houston v. *Scottish Rite Benevolent Association*, 230 S. Ct. 978 (1924) 8

McLaughlin v. *State of Florida*, 379 U.S. 184, 85 S. Ct. 283, 13 L. Ed. 2d 222 (1964) 11

Moses Lake Homes v. *Grant*, 365 U.S. 744, 81 S. Ct. 370, 6 L. Ed. 2d 66 (1960) 12

Phillips Chemical Company v. *Dumas Independent School District*, 361 U.S. 376, 80 S. Ct. 457, 4 L. Ed. 2d 384 (1960) 12

River Oaks Garden Club v. *City of Houston*, 370 SW 2d 851 (1963) 8

Santa Rosa Infirmary v. *City of San Antonio*, 259 SW 926 (1924) 8, 9

Sioux City Bridge Company v. *Dakota County*, 260 U.S. 441, 43 S. Ct. 190, 67 L. Ed. 349 (1922) 11

Walters v. *City of St. Louis*, 347 U.S. 231, 74 S. Ct. 505, 98 L. Ed. 66 (1954) 11

IN THE

SUPREME COURT OF THE UNITED STATES

No. .....

METHODIST RIVER OAKS APARTMENTS, INC.,
Petitioner,

vs.

CITY OF WACO AND LA VEGA INDEPENDENT SCHOOL DISTRICT OF McLENNAN COUNTY, TEXAS,
Respondents.

APPLICATION FOR WRIT OF CERTIORARI OF PETITIONER, METHODIST RIVER OAKS APARTMENTS, INC.

This is the petition for writ of certiorari of Methodist River Oaks Apartments, Inc., a Texas non-profit corporation. Respondents are the City of Waco, Texas, and the La Vega Independent School District of McLennan County, Texas.

(a) The only opinion rendered below was that of the Court of Civil Appeals for the Tenth Supreme Judicial District of Texas, which was reported in 409 SW 2d 485. A copy of this opinion is appended. Review of the judgment of the Court of Civil Appeals was sought in the Supreme Court of Texas by application for writ of error.

This was refused without opinion, with the notation "Refused. No reversible error."

(b) The ground on which the jurisdiction of this Court is invoked is as follows:

Petitioner, a Texas non-profit corporation whose sole purpose is to improve housing conditions and to promote racial integration in a negro ghetto neighborhood, sought ad valorem tax exemption for its apartment complex in the City of Waco and the La Vega Independent School District. Texas law provides ad valorem tax exemption for the property of certain charitable institutions. Though Petitioner meets the criteria for such exemption under Texas law, the exemption which it sought was denied. Denial of exemption was a denial to Petitioner by Respondents and ~~over~~ the Texas Courts of equal protection of the law provided by Amendment 14, Sec. 1 of the Constitution of the United States. The statutory provision believed to confer jurisdiction on this Court is the Act of June 25, 1948, c. 646, 62 Statutes 929, 28 U.S.C. 1257 (3). The date of the action of the Supreme Court of Texas in refusing Petitioner's application for writ of error was March 11, 1967. The date on which Petitioner's motion for rehearing of this refusal was April 26, 1967.

(c) The question presented for review is:

Did the refusal of tax exemption on Petitioner's apartment complex violate the equal protection provision of Amendment XIV, Sec. 1 of the Constitution of the United States?

(d) The constitutional provisions and statutes which the case involves are:

(i) Amendment XIV, Sec. 1 of the Constitution of the United States;

(ii) The Housing Act of 1949, Acts of July 15, 1949, c. 338, Sec. 2, 63 Stat. 413, Title 42, U.S.C., Sec. 1441;

(iii) Article 8, Sec. 2 of the Texas Constitution;

(iv) Art. 7150 (7), R.C.S. Texas 1925, as amended by Acts of the Texas Legislature, 1961, 57th Legislature, page 1087, Chapter 487, Sec. 1, Vernon's Annotated Texas Civil Statutes.

(e) The following are the material facts of the case:

Respondents seek to collect ad valorem taxes on an apartment complex owned by Petitioner. The complex is located in the City of Waco and the La Vega Independent School District. Petitioner claims exemption from ad valorem taxation under provisions of the Texas Constitution and Statutes, which exempt institutions of purely public charity. This tax exemption was denied by the Texas Courts.

Petitioner is a Texas non-profit corporation. It was formed by four Methodist churches (all negro congregations) in Waco, Texas. Its purpose is to provide housing for families of low and moderate income, with assistance from the Federal Housing Commissioner, and to conduct related charitable work. Its members are chosen by the churches. No officer, director or member of the corporation has or can profit from its operation. Petitioner's apartment complex is located in an area populated mostly by negroes, where nearly one-half of the housing is classified as "deteriorating or dilapidated."

It was built with a Federally insured loan under Sec. 221 (d) (3) of the National Housing Act. The complex is a first-class facility. It is integrated, having mostly ne-

gro, but some white tenants. It is open to anyone whose income is low enough to meet Federal standards. There are no similar facilities in Waco (pop. 100,000) where negroes are welcome.

The negro population of McLennan County, Texas is about 16% of the total. There is a high degree of residential segregation in the county. Various social problems are more severe among negroes than among whites in the county. Divorce and separation are more frequent. Earnings are much lower; 65% of negroes and only 23% of whites earn less than $3,000.00 per year. The median income of whites is more than twice that of negroes. The educational level prevalent among negroes is much lower than among whites. Dilapidated housing in the negro residential area is twice as common as in the rest of the county.

Goff, the secretary of Petitioner, testified that the churches organized the corporation "for the purpose of bettering the housing for negro people." Lowe, Petitioner's president, in testimony not admitted by the trial court, but heard for the purpose of perfecting Petitioner's exception to the Court's ruling, stated its purpose to be:

> ". . . to render a service to our people . . . we noted the substandard living conditions of our people and we also knew that there were possibly few other housing situations that they could go into that would lift their standards. We knew that the community had little to offer, especially our negro community. We were aware that possibly some few could go into some other areas of town, but there is a reluctance on the part of our people to do this; they did not know how they would be accepted and because of these things, generally, we were interested in developing something that would lift living standards of our people."

In answer to a question as to whether the complex would help negroes who do not actually live there, Lowe said:

> "Certainly . . . we thought it would give our people a sense of the possible; we thought that this standard, displaying the possible standard for them, would enhance others to reach this standard, developing ourselves, building. . . ."

Petitioner presented the testimony of three noted sociologists who described the effects of bad housing and of segregation. Professor Lee of Brooklyn College testified that:

> "Racially segregated housing gives its inhabitants a distorted impression of society. Children growing up under such conditions are especially damaged by such environment."

Professor Rose of the University of Minnesota, testified:

> ". . . people who live in inferior housing because of discrimination, especially those who are able to afford better housing but cannot get it because of the refusal of the owners, landlords and others to permit them to have it, feel that society regards them as inferior. . . Children in segregated housing especially raise questions about why they are segregated, worry about the rest of society's exclusion of them, feel uneasy in the presence of those responsible for segregation, and sometimes develop aggressive feelings."

Professor Lavantman of the University of Pennsylvania gave similar testimony.

All three professors expressed the opinion that the provision of decent, nonsegregated housing for persons to whom it would otherwise be denied is reasonably likely to prevent a substantial number of such persons from becoming burdens to society and to the State.

The City of Waco does not tax its YMCA, its YWCA (these organizations being specifically exempt under the Texas Constitution) or the property of certain fraternal orders. The YMCA and YWCA rent out rooms. The City has made no efforts to check the conditions under which this is done. In the past, the City has exempted two retirement residences from taxation. The school district has granted exemption to the property of a fraternal order.

The Federal question raised by this application was first raised by pleadings in the trial court. The pleadings in question (Plaintiff's second amended original petition) read:

> "The imposition of taxation upon said property would deny to Plaintiff equal protection under the laws in violation of Art. XIV, Sec. 1 of the Constitution of the United States. . . Under the laws and Constitution of the State of Texas, exemption from ad valorem taxation is granted to properties of purely public charities which are devoted to charitable purposes. An organization is an institution of purely public charity if it assumes, to a material extent, that which might otherwise have become the duty of the Community or the State. The public policy of the United States is that every American Family shall have a decent home and a suitable living environment and shall not be denied these things because of race. Plaintiff, through the operation of the subject property, is helping to fulfill the national policy and is thereby assuming what otherwise might be the duty of the State or of the Community. To deny its property . . . exemption from taxation, when such exemption is granted by the State to other institutions which are deemed 'charitable' by the State would violate national policy."

These contentions were rejected, by virtue of the trial court's judgment that the property was subject to taxation. They were rejected without discussion by the Court

of Civil Appeals, which sustained the trial court's judgment. They were, in effect, rejected by the Supreme Court of Texas when it overruled Petitioner's application of writ of error and motion for rehearing on application for writ of error.

(f) Petitioner's argument, amplifying its reasons relied for allowance of the writ, is as follows:

Texas exempts property of "institutions of purely public charity" from ad valorem taxation. Criteria for determining who qualifies for the exemption are well established. Petitioner, a non-profit corporation whose only functions are to improve housing conditions and to promote racial integration in a negro ghetto neighborhood, meets these criteria. There is no real difference, relevant to the purpose of the exemption, between Petitioner and those Texas institutions whose property is exempt. Therefore, denial of the exemption of Petitioner is a denial of equal protection. While construction of Texas law is not generally the function of this Court, it must see that the Texas Courts do not apply Texas law in violation of the federal Constitution. Therefore, this petition should be granted, and the judgments of the Courts below should be reversed. This is Petitioner's argument in a nutshell.

Taking the nut out of the shell, it is first necessary for the Court to understand the applicable Texas laws and how they have been applied here. Art. 8, Sec. 2 of the Texas Constitution provides that the Legislature may exempt from taxation property which is "owned and used exclusively by" institutions of "purely public charity." Art. 7150 (7), R.C.S. Tex. 1925, grants the exemption permitted by the Constitution. The statute defines charities as institutions which "dispense aid to members and others in distress . . . without regard to the poverty or riches of the recipient."

In *City of Houston* v. *Scottish Rite Benevolent Association*, 230 S. Ct. 973 (1924), the Texas Supreme Court said that an institution, to be a "purely public charity", must:

(a) Make no gain or profit;

(b) Accomplish ends wholly benevolent; and

(c) Benefit persons indefinite in number and personality by preventing them, through absolute gratuity, from becoming burdens to society or the state.

In *River Oaks Garden Club* v. *City of Houston*, 370 SW 2d 851 (1963), which involved a different "River Oaks" than the area with which we are concerned, the Texas Court expanded on the foregoing, holding that to qualify as a charity, an institution must "assume to a material extent, that which might otherwise become the duty or obligation of the Community or the State."

In our case, the Texas Court of Civil Appeals purported to apply the standards announced in *River Oaks* and *Scottish Rite*. The manner in which these standards were applied denied to Petitioner the equal protection guaranteed by the Fourteenth Amendment.

Petitioner is a non-profit corporation. None of its members or officers makes anything from its operation. It does charge rent for its apartments. The rent is used to pay its operating expenses and to pay the payment on the construction money mortgage on the apartment complex. However, under *Santa Rosa Infirmary* v. *City of San Antonio*, 259 SW 926 (1924), decided by the Texas Commission of Appeals in a judgment adopted by the Texas Supreme Court, this does not prevent its meeting the "no profit" and "absolute gratuity" tests of *Scottish Rite*. In *Santa Rosa*, a city sought to tax a hospital owned by a non-profit corporation. Most of the hospital patients

were paying patients. A debt incurred to build the hospital was paid out of its revenue. Nevertheless, the Texas Court held that the corporation was a purely public charity and that the hospital was exempt.

Understood in the light of *Santa Rosa*, the "no profit" and "absolute gratuity" tests mean simply that the members and officers of the institution must make no profit, and that the motive for operation of the institution must not be gain. Petitioner meets these tests.

The apartment complex is open to anyone whose income is small enough to meet Federal standards. Therefore, it meets the test of benefiting persons "indefinite in number and personality."

The Texas Court of Civil Appeals denied exemption here because the facilities in question are first-class and carry a fairly high rental. It held that because the apartments are for others than the very poor, no charity is involved. Thus, inferentially, it held that the "wholly benevolent" and "assumption of the burdens of society" tests were not met. But Petitioner never claimed to alleviate poverty, as such. It claims exemption because it has assumed a part of the state's burden to deal with the problems resulting from the peculiar and tragic history of the negro in our society. The record (as well as common knowledge) establishes that negroes, simply because of their history, are persons in "distress", regardless of their individual financial situations (which are not material, at any rate, under Art. 7150 (7)). Their "distress" is the degradation inflicted upon them by their history of slavery, segregation, and discrimination. An ugly aspect of this distress is the ghetto-neighborhood where negroes are crowded together as the result of poverty and other pressures which effectively exclude them from other areas,

despite all that the law has been able to do; where the available housing, even for those who could afford better if they were welcomed in other areas, is generally dilapidated; where the surroundings are such as to inspire a sense that it is hopeless to want anything better.

The aid given by Petitioner to victims of this distress lies partly in giving them ". . . a sense of the possible . . . a standard for which to strive" (in the words of Petitioner's president, Lowe). And, it lies partly in making a crack in the wall of the ghetto. There are two ways to destroy the ghetto. One is to disperse its residents throughout the rest of the community. The other way is to improve facilities in the ghetto area, and to bring in outsiders, so the residents are no longer segregated. You break down a negro ghetto when you bring in whites. To do this you must make the area attractive to whites. The housing provided must be good enough and cheap enough to make them willing to ignore the old taboos and come into a negro neighborhood. Petitioners have done this with some measure of success.

Certainly, if the English language means anything, this purpose is benevolent. Certainly if history teaches anything, this activity does constitute a real and constructive attempt to lift part of the burden of the State in a sensitive and difficult area where the State clearly has a duty to act. Thus, Petitioner meets the "wholly benevolent" and "assumption of burdens test." Since it meets all of the tests, it should be exempt.

What the Court below has done (no doubt, inadvertently) is to say that while relief of persons in "distress" is the hallmark of a charity, where the distress arises out of a person's race, the relief is not charity; that while the essential ingredient of a charity is that it

must bear part of the state's burden, when the burden borne arises from problems of race, the bearer of the burden is not a charity. Let this Court consider what it would do if the Texas Constitution and statute provided that charitable institutions, *save and except those which deal with social problems arising from race,* are exempt from taxation.

Having reviewed the Texas law as it has been applied here, let us now see how its application has violated the Federal Constitution. Discrimination in the exercise of the taxing power, whether by the terms of a statute or by the manner in which the statute is applied, violates Amendment XIV, Sec. 1. *Sioux City Bridge Company* v. *Dakota County,* 260 U.S. 441, 43 S. Ct. 190, 67 L. Ed. 349 (1922). While the state is permitted under the 14th Amendment to make classifications under its laws, such classifications must be reasonable, not arbitrary; they must be real, not feigned; and the distinctions between classes must have some relevance to the purpose of the statute. *Walters* v. *City of St. Louis,* 347 U.S. 231, 74 S. Ct. 505, 98 L. Ed. 66 (1954); *McLaughlin* v. *State of Florida,* 379 U.S. 184, 85 S. Ct. 283, 13 L. Ed. 2d 222 (1964). The classification here is clearly arbitrary and feigned, in the light of the common understanding of the word "charity" and the tests which the Texas Courts have always applied. It has no relevance to the purpose of the tax exemption. Therefore, it should be rejected.

Further, the Housing Act of 1949 declares that the general welfare and security of the Nation require the realization, as soon as feasible, of the goal of a decent home and a suitable living environment for all Americans. In the paragraph containing this declaration of policy, all agencies of the Federal Government dealing

with housing are required to exercise their powers so as to promote the development of well planned, *integrated*, residential neighborhoods. The apartment complex was constructed with a loan insured by the United States under Section 221(d) 3 of the National Housing Act, Title 12, U.S.C., Sec. 1515 (1), to assist in relocating families moved as a result of urban renewal done under the Housing Act of 1949. Thus, the purpose of the complex is accomplishment of the policy announced by the Congress in the Housing Act of 1949. If it be admitted that Congress has, in the Housing Act of 1949, correctly stated the policy of the United States and the duty of the government, any purported classification under Texas law which grants tax exemption to institutions because they minister to needs, the fulfillment of which is the duty of the state, and denies such exemption to Petitioner, does not rest upon a real reasonable difference.

Finally, this Court has held that where the interests of the Federal Government are involved, those interests must be weighed in the balance in determining whether the power of the state has been applied unequally. *Phillips Chemical Company* v. *Dumas Independent School District*, 361 U.S. 376, 80 S. Ct. 457, 4 L. Ed. 2d 384 (1960); *Moses Lake Homes* v. *Grant*, 365 U.S. 744, 81 S. Ct. 370, 6 L. Ed. 2d 66 (1960). Thus the fact that the apartment complex was built in furtherance of national policy, and that the government insured loan must be paid out of the rentals from the complex, must be weighed in determining whether there has been a denial of equal protection.

For these reasons, certiorari should be granted. The judgment of the Texas Court of Civil Appeals should be reversed. The relief sought by Petitioner in the trial court should be granted.

Respectfully submitted,

BEARD & KULTGEN
P. O. Box 529
Waco, Texas

By .....
DAVID B. KULTGEN

.....
THOMAS P. BROWN
1008 20th St. NW
Washington, D. C.
Attorneys for Petitioner

APPENDIX A

Opinion of the Court of Civil Appeals of the Tenth Supreme Judicial District of Texas

This is an appeal from a judgment denying Methodist River Oaks Apartments, Inc., exemption from the payment of ad valorem taxes upon its property.

Methodist brought suit for a declaratory judgment that its apartments located in the City of Waco and La Vega School District be exempted from ad valorem taxes, on the ground that the Constitution and laws of Texas exempt from ad valorem taxes, properties of purely public charities, which are devoted to charitable purposes. Trial was before the court without a jury which, after hearing, entered judgment denying Methodist tax exemption as a chartable organization.

Methodist appeals on four points, contending the trial court erred in holding that its apartment complex was subject to ad valorem taxes.

Methodist is a non-profit corporation organized under the laws of Texas "to provide dwelling accommodations for families displaced from urban renewal areas," "and to assist further the provision of housing for moderate and low income families." It was formed by 4 negro Methodist churches. The members of the corporation are chosen by the churches which organized it; and no officer or member of the corporation has ever profited from its operation. The apartment complex contains 152 units; is a first-class facility; and is integrated. The units rent for $72.50 and $76.50 per month; one apartment has been furnished a tenant at a reduced rental, but no apartment has been provided rent free. The apartments are 79% occupied; are advertised in both Waco telephone book and in newspapers; are centrally air conditioned and

heated; have 30 inch range; venetian blinds; prompt maintenance; central TV antenna; and 11.8 cubic foot refrigerators.

Other housing is available in Waco. In 1960, there were 2,036 vacant housing units in Waco. Maxey Apartments are operated by Public Housing Authority and rented for $23 to $71 per month and have 90% occupancy. Private housing is available in the area of Methodist at $50 per month.

Article 8, Section 2 of the Texas Constitution provides: "* * * the Legislature may, by general laws, exempt from taxation property used for public purposes * * *."

And Article 7150, VATS, provides:

"The following property shall be exempt from taxation: *** 7. Public charities.—All buildings belonging to institutions of purely public charity, together with the lands belonging to and occupied by such institutions not leased or otherwise used with a view to profit, * * *."

Exemptions from taxation are never favored, and in construing laws exempting any organization, all doubts are resolved against the exemption. Morris v. Masons, Sup. Ct. 5 SW 519; Santa Rosa Infirmary v. City of San Antonio, Sup. Ct., 259 SW 926.

Whether an organization is a "purely charitable institution" so as to entitle its property to tax exemption is a question of fact; and the burden is on the organization claiming exemption from taxation to clearly prove it. B. & P. O. E. v. City of Houston, CCA, Er. Ref., 44 SW 2d 488; Malone-Hogan Hosp. v. City of Big Spring, CCA, (nre), 288 SW 2d 550.

An organization is not an "institution of purely public charity" within the constitutional and statutory tax

exemption, unless the organization: 1) makes no gain or profit; 2) accomplishes ends wholly benevolent; 3) benefits persons, indefinite in numbers and in personalities, by preventing them, through absolute gratuity, from becoming burdens to society and to the State. City of Houston v. Scottish Rite, Sup. Ct., 230 SW 978; River Oaks Garden Club v. City of Houston, Sup. Ct., 370 SW 2d 851.

In River Oaks, *supra*, the court says:

> "One ground upon which exemptions from taxation of charitable institutions * * * can be justified * * * is that they minister to human and social needs which the state itself might and does to a greater or less extent undertake to satisfy. The ultimate obligation of the state thus is discharged by the private charity. To that extent the state is relieved of its burden."

Applying the rules of law to the factual situation here involved, we think the trial court correctly denied Methodist tax exemption as a purely public charity.

Methodist does not alleviate suffering caused by inadequate housing, and it provides no service which the State would be obligated to assume. The record reflects many other sources of adequate housing at rates below those charged by Methodist. And if a family does not live in centrally air conditioned and heated housing, renting for $72.50 to $76.50 per month with 30 inch range, venetian blinds, prompt maintenance, centrally located TV antenna, and an 11.8 foot refrigerator, such family will not necessarily, under the record here, become an obligation of the community or State.

All appellant's points and contentions are overruled. The judgment is correct. AFFIRMED.

.....

FRANK G. McDONALD
Chief Justice

APPENDIX B

Judgments of the Trial Court

(This case involved two combined lawsuits. Petitioner sued the City of Waco and the La Vega Independent School District for a declaratory judgment that its property was not subject to taxation. The City and the School District sued petitioner for taxes on its property. The two cases were tried together).

No. 32350

METHODIST RIVER OAKS APARTMENTS, INC.	IN THE DISTRICT COURT OF
VS.	MCLENNAN COUNTY, TEXAS,
THE CITY OF WACO, ET AL	74TH JUDICIAL DISTRICT

Judgment

THIS the 16th day of June, 1966, in the above entitled and numbered cause, wherein Methodist River Oaks Apartments, Inc., is Plaintiff and the City of Waco and La Vega Independent School District are Defendants, came the parties by their attorneys, and submitted the matters in controversy, as well as facts as of law, to the Court, without the intervention of a jury, a jury having been waived by all parties, and the pleadings, the evidence and the argument of counsel having been heard and fully understood, it is the opinion of the Court that the Defendants should, and it is therefore ORDERED, ADJUDGED, DECREED, DETERMINED AND DECLARED that the Defendants do have and recover against the Plaintiff a Judgment determining and declaring that Plaintiff, Methodist River Oaks Apartments, Inc., is not entitled to an exemption from the payment of ad valorem taxes to the Defendants upon the property made the basis of this suit,

and all costs in this proceeding are adjudged against the Plaintiff, Methodist River Oaks Apartments, Inc., for which let execution issue, to all of which Plaintiff duly exeepted and gave notice of appeal to the Court of Civil Appeals for the Tenth Supreme Judicial District of Texas.

SIGNED AND ENTERED this ..... day of July, 1966.

.....
D. Y. McDaniel, Judge

APPROVED AS TO FORM:

City of Waco, Texas
By /s/ Thomas R. Hunter
Thomas R. Hunter, City Attorney
La Vega Independent School District
By /s/ Tommy P. Herring
Attorney
/s/ David B. Kultgen
David B. Kultgen, Attorney for
Methodist River Oaks Apartments,
Inc., Plaintiff

No. 32524

La Vega Independent School District, Et Al vs. Methodist River Oaks Apartments, Inc.	In the District Court of McLennan County, Texas, 74th Judicial District

Judgement

BE IT REMEMBERED that on the 16th day of June, 1966, came on to be heard in regular order the above numbered and entitled cause wherein the La Vega Independent School District of McLennan County, Texas, is

plaintiff, and wherein Methodist River Oaks Apartments, Inc., a corporation, is defendant; and wherein the City of Waco, Texas, and the State of Texas, and the County of McLennan, are impleaded party defendants; and the impleaded party defendant, City of Waco, Texas, having filed herein its Petition of Intervention and being hereinafter referred to as Intervenor; and the defendant, Methodist River Oaks Apartments, Inc., having duly answered herein, but the impleaded parties defendant, the State of Texas and County of McLennan, though duly cited and served with citation herein for the time and as by law provided, failed to make answer or to otherwise appear herein; and plaintiff and intervenor, without objection of the defendant, having moved the Court to dismiss without prejudice the said State of Texas and the County of McLennan, and to dismiss from this suit any parties not named above, it is so ORDERED; and the plaintiff, La Vega Independent School District, the intervenor, City of Waco, Texas, and the defendant, Methodist River Oaks Apartments, Inc., announced ready for trial, and no jury being demanded but being waived by all parties, all matters of controversy, both of fact and of law, were submitted to the Court, and the defendant having admitted its ownership of and title to the land, improvements thereupon, and the personal property hereinafter described, and the delinquent tax records of plaintiff and of the intervenor were introduced in evidence, and evidence was submitted as to the value of the hereinafter described land, the improvements thereupon, and of the hereinafter described personal property; and the Court having heard the pleadings, the evidence, and the argument of counsel, is of the opinion and finds as follows:

The above named defendant, Methodist River Oaks Apartments, Inc., which was duly served with citation in this cause and has duly made answer and appearance herein, was, and is, the owner of record of the hereinafter described land together with the improvements thereon and of the hereinafter described personal property, at the time of the institution of this suit and at this time. Said land and each item of property described in the petitions of plaintiff and intervenor was located within the boundaries of plaintiff and of intervenor upon the dates when the taxes hereinafter found to be due were assessed, and at this time. All of the said land and property, real and personal, as appearing upon the said delinquent tax rolls of plaintiff and intervenor and owned as aforesaid by the defendant is subject to taxation by the said taxing units, and is not exempt from taxation under any provision of the constitution or laws of this State.

There are taxes, penalties, interest, and costs due, owing and unpaid to plaintiff and to intervenor, taxing units, in the amounts hereinbelow set out upon the hereinafter described land, improvements and personal property. Said taxes, penalties, interest and costs constitute a separate, valid and subsisting lien in favor of plaintiff and of intervenor, respectively, on each tract of land, together with all buildings and improvements thereupon situate, and on each item of personal property, as hereinafter described, to secure the payment of the taxes, penalties, interest and costs hereinafter adjudged to be due against each separate tract of land hereinafter described, together with the improvements thereon, respectively, and against such said personal property, which lien is prior to and superior to all claims, right, title, interest or liens asserted by the defendant herein.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that there is due, owing and unpaid to plain-

tiff in the capacity in which it sues, and to the intervenor in the capacity in which it sues, respectively, the following amount of taxes, penalties, interest and costs for all delinquent years upon the following described property as set out in the schedule immediately following, together with interest at the rate of six per cent per annum on all of said sums, respectively, from this date until paid, to-wit:

Amount Due to	Real Property	Personal Property
La Vega Independent School District	$ 9,390.55	$ 286.58
City of Waco	22,633.96	
Total Due	$ 32,024.51	$ 286.58
Adjudged Value	$1,185,250.00	$36,180.00

The tract of land herein referred to is described as follows:

> Lot 8 in Block 8, River Oaks Addition No. 4, to the City of Waco, McLennan County, State of Texas, and shown on Map page 192, and as more fully described in the deed of conveyance of said tract of land to defendant, Methodist River Oaks Apartments, Inc., shown of record in the Deed Records of McLennan County, Texas, and here referred to.
>
> Personal Property:
>
> 152 General Electric 11.8 cu. ft. refrigerators;
>
> 152 Hardwick 30″ gas ranges;

said personal property being located in the buildings located and situated upon the above described tract of land in the City of Waco, McLennan County, Texas.

The amount of the taxes, penalty, interest and costs, as shown by the foregoing schedule to be delinquent, due and owing to plaintiff La Vega Independent School Dis-

trict, is the amount due for the year 1964 only, and is without prejudice to the rights of said plaintiff to recover taxes, together with penalties, interest, and costs that may be due, past due, and to become due during subsequent years.

The amount of the taxes, penalty, interest, and costs, as shown by the foregoing schedule to be delinquent, due and owing to intervenor, the City of Waco, is the amount for the years 1964 and 1965 only, and is without prejudice to the right of said intervenor to recover taxes, together with penalties, interest, and costs that may be due, past due, and to become due during subsequent years.

AND IT IS FURTHER ORDERED, ADJUDGED AND DECREED that a lien exists against said lot, tract, or parcel of land, and all buildings and improvements thereupon situate, and upon each and every item of personal property as above described, for the amount of taxes, interest, penalties, and costs herein adjudged to be due on each particular lot, tract, or parcel of land upon each item of personal property, which lien is prior and superior to all claims, right, title, interest, or liens asserted by any party defendant herein, and that plaintiff and intervenor taxing units have foreclosure of their respective liens on said lot, tract, or parcel of land, together with all buildings and improvements thereon and there situate, and on all of said personal property and each item thereof, as against the defendant, Methodist River Oaks Apartments, Inc., or any person claiming under the said defendant by any right or claim acquired pending in this suit, and that an Order of Sale be issued by the Clerk of this Court directed to the Sheriff or any Constable of McLennan County, Texas, commanding such officer to seize, levy upon, and advertise the sale of the said tract of land and improvements thereupon, and to seize, levy upon, and advertise the sale of said personal property, and sell the said property, real

and personal, to the highest bidder for cash, as under Execution, provided that none of said property shall be sold to any party, other than a taxing unit which is a party to this suit, for less than the adjudged value of the property or the aggregate amount of the judgment against the property in said suit, whichever is lower; the said adjudged value, or reasonable fair value, of the property as set by this Court is as shown by the foregoing schedule, and if no amount is shown on the schedule in space provided therefor, the Court did not fix such adjudged value; but if the defendant by and through its proper officer or by Attorney shall at any time before the sale file with the Sheriff or other officer in whose hands this Order of Sale shall be placed, a written request that the property described therein shall be divided and sold in less tracts than the whole, together with a description of said subdivisions, then such officer shall sell the property in such subdivision as the defendant may request, and in such case shall sell only as many subdivisions as necessary to satisfy this Judgment, interest, and costs, the net proceeds of any sale of such property made hereunder to any party other than a taxing unit who is a party to this suit to be applied to satisfy the judgments and liens foreclosed herein, but any excess in the proceeds of sale over and above the amount necessary to pay the taxes due, penalty, interest, and costs, and defray the costs of suit and sale and other expenses chargeable against said property, shall be paid to the parties legally entitled to such excess; that the owner of such property, or anyone having an interest therein or their heirs, assigns, or legal representative, may redeem such property in the time and manner prescribed by law; that the officer executing the Order of Sale shall make proper conveyance to the purchaser or purchasers of said land and property as prescribed by law, subject to such right of redemption; and that if before the expiration of the period of redemption

fixed by law no person who is entitled to redeem the said land and property has exercised the right of redemption, then a writ of possession shall be issued to the purchaser at foreclosure sale, or his assigns, by the Clerk of this Court within twenty (20) days after the period of redemption shall have expired, ordering the Sheriff or proper officers to place the purchaser or purchasers, or their heirs, executors, assigns or administrators in possession of the property so purchased in accordance with the laws of the State of Texas.

All costs in this suit are adjudged against the defendant, Methodist River Oaks Apartments, Inc.

All relief prayed for in the pleadings of the defendant, Methodist River Oaks Apartments, Inc., is hereby denied.

To which said Order, Judgment and Ruling of the Court the defendant, Methodist River Oaks Apartments, Inc., by its attorney of record, then and there in open Court objected and excepted, and gave notice of appeal to the Honorable Court of Civil Appeals of the Tenth Supreme Judicial District of the State of Texas, at Waco, Texas.

SIGNED AND ENTERED this the ..... day of ....., 1966.

.....

D. Y. McDANIEL, JUDGE

APPROVED AS TO FORM:

City of Waco:

By /s/ Thomas R. Hunter
Thomas R. Hunter, City Attorney

La Vega Independent School District

By /s/ Tommy P. Herring
Attorney

/s/ David B. Kultgen
David B. Kultgen, Attorney for Methodist River Oaks Apartments, Inc., Plaintiff

APPENDIX C

Text of Constitutional Provisions and Statutes Which the Case Involves

Amendment XIV, Sec. 1 of the Constitution of the United States which reads:

> "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any persons within its jurisdiction the equal protection of the laws."

The Housing Act of 1949, Acts of July 15, 1949, c. 338, Sec. 2, 63 Stat. 413, Title 42, U.S.C., Sec. 1441, which reads:

> "The Congress declares that the general welfare and security of the Nation and the health and living standards of its people require housing production and related community development sufficient to remedy the serious housing shortage, the elimination of substandard and other inadequate housing through the clearance of slums and blighted areas, and the realization as soon as feasible of the goal of a decent home and a suitable living environment for every American family, thus contributing to the development and redevelopment of communities and to the advancement of the growth, wealth, and security of the Nation. The Congress further declares that such production is necessary to enable the housing industry to make its full contribution toward an economy of maximum employment, production, and purchasing power. The policy to be followed in attaining the national housing objective established shall be: (1) private enterprise shall be encouraged to serve

as large a part of the total need as it can; (2) governmental assistance shall be utilized where feasible to enable private enterprise to serve more of the total need; (3) appropriate local public bodies shall be encouraged and assisted to undertake positive programs of encouraging and assisting the development of well-planned, integrated residential neighborhoods, the development and redevelopment of communities, and the production, at lower costs, of housing of sound standards of design, construction, livability, and size for adequate family life; (4) governmental assistance to eliminate substandard and other inadequate housing through the clearance of slums and blighted areas, to facilitate community development and redevelopment, and to provide adequate housing for urban and rural non-farm families with incomes so low that they are not being decently housed in new or existing housing shall be extended to those localities which estimate their own needs and demonstrate that these needs are not being met through reliance solely upon private enterprise, and without such aid; and (5) governmental assistance for decent, safe, and sanitary farm dwellings and related facilities shall be extended where the farm owner demonstrates that he lacks sufficient resources to provide such housing on his own account and is unable to secure necessary credit for such housing from other sources on terms and conditions which he could reasonably be expected to fulfill. The Housing and Home Finance Agency and its constituent agencies, and any other departments or agencies of the Federal Government having powers, functions, or duties with respect to housing, shall exercise their powers, functions and duties under this or any other law, consistently with the national housing policy declared by this Act and in such manner as will facilitate sustained progress in attaining the national housing objective hereby established, and in such manner as will encourage and assist (1) the production of housing of sound standards of design, construction, livability, and size for adequate family

life; (2) the reduction of the costs of housing without sacrifice of such sound standards; (3) the use of new designs, materials, techniques, and methods in residential construction, the use of standardized dimensions and methods of assembly of home-building materials and equipment, and the increase of efficiency in residential construction and maintenance; (4) the development of well-planned, integrated, residential neighborhoods and the development and redevelopment of communities; and (5) the stabilization of the housing industry at a high annual volume of residential construction."

Article 8, Sec. 2 of the Texas Constitution which reads:

"All occupation taxes shall be equal and uniform upon the same class of subjects within the limits of the authority levying the tax; but the legislature may, by general laws, exempt from taxation public property used for public purposes; actual places or (of) religious worship, also any property owned by a church or by a strictly religious society for the exclusive use as a dwelling place for the ministry of such church or religious society, and which yields no revenue whatever to such church or religious society; provided that such exemption shall not extend to more property than is reasonably necessary for a dwelling place and in no event more than one acre of land; places of burial not held for private or corporate profit; all buildings used exclusively and owned by persons or associations of persons for school purposes and the necessary furniture of all schools and property used exclusively and reasonably necessary in conducting any association engaged in promoting the religious, educational and physical development of boys, girls, young men or young women operating under a State or National organization of like character; also the endowment funds of such institutions of learning and religion not used with a view to profit; and when the same are invested in bonds or mortgages, or in land or other property which has been

and shall hereafter be bought in by such institutions under foreclosure sales made to satisfy or protect such bonds or mortgages, that such exemption of such land and property shall continue only for two years after the purchase of the same at such sale by such institutions and no longer, and institutions of purely public charity; and all laws exempting property from taxation other than the property above mentioned shall be null and void."

Art. 7150 (7), RCS Texas 1925, as amended by Acts of the Texas Legislature, 1961, 57th Legislature, page 1087, Chapter 487, Sec. 1, Vernon's Annotated Texas Civil Statutes which reads:

"The following property shall be exempt from taxation, to-wit:

Public charities. All buildings and personal property belonging to institutions of purely public charity, together with the lands belonging to and occupied by such institutions not leased or otherwise used with a view to profit, unless such rents and profits and all moneys and credits are appropriated by such institutions solely to sustain such institutions and for the benefit of the sick and disabled members and their families and the burial of the same, or for the maintenance of persons when unable to provide for themselves, whether such persons are members of such institutions or not. An institution of purely public charity under this article is one which dispenses its aid to its members and others in sickness or distress, or at death, without regard to poverty or riches of the recipient, also when the funds, property and assets of such institutions are placed and bound by its law to relieve, aid and administer in any way to the relief of its members when in want, sickness and distress, and provide homes for its helpless and dependent members and to educate and maintain the orphans of its deceased members or other persons."

LIBRARY
SUPREME COURT, U. S.

JUL 21 1967

JOHN F. DAVIS, CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

No. 291

METHODIST RIVER OAKS APARTMENTS, INC.,
Petitioner,

vs.

CITY OF WACO AND LA VEGA INDEPENDENT SCHOOL DISTRICT OF McLENNAN COUNTY, TEXAS,
Respondents.

RESPONDENTS' BRIEF IN REPLY TO APPLICATION FOR WRIT OF CERTIORARI OF PETITIONER, METHODIST RIVER OAKS APARTMENTS, INC.

LA VEGA INDEPENDENT SCHOOL DISTRICT:
V. H. McClintock
P. O. Box 4355
Waco, Texas 76705

CITY OF WACO:
Thomas R. Hunter
City Attorney
Don J. Rorschach
Assistant City Attorney

William Earl Bracken, Jr.
First Assistant City Attorney
P. O. Box 1370
Waco, Texas 76703
Attorney for Respondents

TABLE OF CONTENTS

(a) Reference to Opinion Delivered in the Court Below 1

(b) Respondents' Statement of Grounds on Which Petitioner Attempts to Have the Supreme Court's Jurisdiction Invoked 1

(c) Questions Presented by Petitioner for Review 3

(d) Constitutional Provisions and Statutes Which the Case Involved 3

(e) Statement of the Case (Which Specifies Why Federal Questions Were Not Raised) 3

(f) Argument 6

(g) Appendix A—Opinion of the Court of Civil Appeals of the Tenth Supreme Judicial District of Texas A1

(h) Appendix B—Text of Constitutional and Statutory Provisions A4

Statutes

Amendment XIV, Section 1, Constitution of the United States 3, 13

Article 3, Sec. 56, Texas Constitution ..... 3, 7.

Article 8, Sec. 2, Texas Constitution 2, 3, 6, 13

Article 7150(7), R.C.S. Texas 1925, Amended by Acts of Texas Legislature, 1961, 57th Legislature, page 1087, Chapter 487, Sec. 1 (Art. 7150-7), V.A.T.C.S. 2, 3, 7, 9, 12, 13

Index of Cases

Allied Stores of Ohio, Inc. v. Bowers, 358 U.S. 552, 79 S. Ct. 437, 3 L. Ed.2d 480 (1959) 13

City of Arlington v. Cannon, 271 SW 2d 414 (1954) 15

City of Houston v. Baker, 178 SW 820 14

City of Houston v. Scottish Rite Benevolent Association, 230 SW 978 (1921) 8

County of Douglas v. OEA Senior Citizens, Inc., 172 Neb. 696, 111 NW 2d 719 10

Delta Airlines v. Coleman, 131 SE 2d 768, 84 S. Ct. 195 6

Dickison v. Woodmen of the World Life Ins. Co., 280 SW 2d 315 (1955) 6

Erie R. R. Co. v. Tompkins, 304 U.S. 64, 58 S. Ct. 817, 82 L. Ed. 1188 (1938) 15

David Graham Hall Foundation v. Highland Park Independent School District, 371 SW 2d 762 (1963) 8

Malone-Hogan Hospital Clinic Foundation, Inc. v. The City of Big Spring, et al, 288 SW 2d 550 (1956) 12

Morris v. Lone Star Chapter No. 6, Royal Arch Masons, 5 SW 519 (1887) 7, 13, 14

Moses Lake Homes v. Grant, 365 U.S. 744, 81 S. Ct. 370, 6 L. Ed.2d 66 (1960) 15

Philada Home Fund v. Board of Tax Appeals, 5 Ohio St. 2d 135, 214 NE 2d 431 (1966) 10

Phillips Chemical Company v. Dumas Independent School District, 361 U.S. 376, 80 S. Ct. 457, 4 L. Ed.2d 384 (1960) 15

River Oaks Garden Club v. City of Houston, 370 SW 2d 851 (1963) 8, 9, 11, 12

Santa Rosa Infirmary v. City of San Antonio, 259 SW 2d 926 (1924) 7

IN THE

SUPREME COURT OF THE UNITED STATES

No. 291

METHODIST RIVER OAKS APARTMENTS, INC.,
Petitioner,

vs.

CITY OF WACO AND LA VEGA INDEPENDENT SCHOOL DISTRICT OF McLENNAN COUNTY, TEXAS,
Respondents.

RESPONDENTS' BRIEF IN REPLY TO APPLICATION FOR WRIT OF CERTIORARI OF PETITIONER, METHODIST RIVER OAKS APARTMENTS, INC.

This is Respondents' Reply to Petitioner's Application for Writ of Certiorari. Respondents are the City of Waco, Texas, and La Vega Independent School District of McLennan County, Texas, and Petitioner is Methodist River Oaks Apartments, Inc.

(a) Respondents accept Petitioner's reference to the only opinion rendered below which was that of the Court of Civil Appeals for the Tenth Supreme Judicial District of Texas.

(b) Respondents do not accept Petitioner's statement concerning the ground on which the jurisdiction of this

Court is invoked because under the uncontroverted evidence, Petitioner is not a "purely public charity," as provided by Article 8, Sec. 2 of the Texas Constitution and Article 7150(7) R.C.S. Tex. 1925, as interpreted by the judicial decisions, and the undisputed evidence was as follows:

1. Neither Methodist River Oaks Apartments, Inc., nor its trustees or constituent organizations made any financial contributions to the enterprise.

2. The scale of rentals was determined and fixed so that the contemplated rental income would discharge operation expenses, depreciation, insurance costs, interest and requirements to amortize the principal loan payments within the loan period.

3. Ad valorem taxes were expressly named as one of the factors of operation expenses.

4. Rental payments as so computed were exacted of every tenant and an advance deposit required in order to insure a portion of the rental contractual obligation and there is no evidence in the record that Petitioner deviated from this policy.

5. The enterprise is planned and organized to be a commendable self-liquidating venture and when satisfaction of the indebtedness is accomplished by the owner corporation, it will come into property free of a debt that has been paid off by the rentals of tenants.

6. Petitioner's charter and by-laws showed Petitioner's sole purpose is to provide housing for modest and low income families at minimum costs and subsidized rental, if necessary.

7. The only other purpose was that of pure conjecture produced through witness Lowe by unadmitted testimony as noted on Page 4 of Petitioner's Application.

8. Petitioner also applies the label of "negro ghetto neighborhood" to the portion of Waco from which Petitioner draws its tenants but that is not an apt description and it is not to be found in the record as describing any portion of the City of Waco. Use of that term in Petitioner's Application is unfortunate.

Therefore, Petitioner was not denied equal protection of the law provided by Amendment XIV, Section 1 of the Constitution of the United States and jurisdiction of this Court should not have been invoked.

(c) The question presented for review by Petitioner is;

> Did the refusal of tax exemption on Petitioner's apartment complex violate the equal protection provision of Amendment XIV, Section 1 of the Constitution of the United States?

(d) The Constitutional provisions and statutes which the case involved are:

1. Amendment XIV, Section 1 of the Constitution of the United States;
2. Article 3, Section 56 of the Texas Constitution;
3. Article 8, Section 2 of the Texas Constitution;
4. Article 7150(7), R.C.S. Texas 1925, as amended by Acts of the Texas Legislature, 1961, 57th Legislature, page 1087, Chapter 487, Section 1, Vernon's Annotated Texas Civil Statutes.

(e) The following are the material facts of the case:

Petitioner is an apartment complex of 152 units self-advertised in Waco newspapers as renting for $72.50 to $76.50, centrally air conditioned and heated, each with 30-inch range, venetian blinds, prompt maintenance, central TV antenna and 11.8 cubic foot refrigerators. Petitioner is open to anyone whose income is high enough to pay either $72.50 or $76.50 monthly rental and make a $25.00 deposit.

Those who are unable to pay the stated rental are evicted and there have never been any charity tenants although only seventy-nine per cent (79%) of the apartments were occupied as of August 31, 1965. The Waco metropolitan area's median gross rent paid by those in renter-occupied housing units in 1960 was fifty-five dollars ($55.00) per month which *included* the cost of utilities. Maximum income limits placed on Petitioner's tenants extend to seven thousand six hundred dollars ($7,600.00) per year. The median income for *all* families living in the Waco area was four thousand eight hundred fifty-nine dollars ($4,859.00) per year in 1960.

Decent, standard housing in Petitioner's immediate area is available on an integrated basis from sources other than Petitioner. In 1960 there were 2,036 available vacant housing units in metropolitan Waco. Some of Petitioner's tenants have vacated Petitioner in favor of this privately owned housing which is taxed by Respondents. Apartments operated by the Public Housing Authority on an integrated basis are available at rentals ranging from $23.00 to $71.00 per month and have an average occupancy of ninety per cent (90%). Petitioner is in direct competition with private housing in its immediate area.

Petitioner was organized under the Texas Non-Profit Corporation Act, but Petitioner receives thirty per cent (30%) of the receipts from the owners of laundries located on Petitioner's premises. Said profit is *not* used to benefit the apartment complex or the tenants.

Petitioner admits on Page 9 of its Application it "never claimed to alleviate poverty, as such" so its activities do not directly lessen a financial burden which would otherwise be borne by the taxpayer.

Petitioner's actual purpose for organizing Methodist River Oaks Apartments, Inc., is rather obscure when one attempts to make that determination from the record. Petitioner's charter and by-laws were placed in evidence, but

by Petitioner's own admission, Petitioner has not attempted to pursue those purposes.

Petitioner attempted to give the apartment complex a purpose which Petitioner felt should be regarded as a tax exempt charitable purpose. This was attempted by offering Lowe's inadmissible testimony as evidence of such purpose. The Court correctly ruled Lowe could not state what were the incorporators' mental processes involved in organizing Petitioner. Testimony of another person's mental process does not even have the credibility of the rankest hearsay.

Petitioner, on Page 4 of its Application, now contends the apartments were constructed "for the purpose of bettering the housing for negro people." Petitioner, on Page 5 of its Application, contends the apartments would provide a "possible standard." Petitioner has not produced evidence which shows the apartment complex accomplishes such purposes assuming the accomplishments of such purposes would make Petitioner tax exempt under Texas law.

There is decent, integrated vacant housing for persons in Petitioner's area so the record does not show Petitioner provides a unique service or prevents a substantial number of persons from becoming burdens to society and to the State.

It is true the City of Waco does not tax its Y.M.C.A. or Y.W.C.A., but only because they meet the necessary requirements of Texas law and not because they are specifically exempt under the Texas Constitution which they are not. The Texas Constitution does *not* specifically exempt the Y.M.C.A. or Y.W.C.A. from ad valorem taxation.

The Court of Civil Appeals addressed itself directly to the contention made by Petitioner in Plaintiff's Second Amended Original Petition and quoted in Petitioner's Application on Page 6. The Court's opinion reads:

> ". . . it provides no service which the State would be obligated to assume."

Petitioner's Application for Writ of Error and Motion for Rehearing to the Texas Supreme Court was overruled.

(f) Respondents' argument:

Since petitioner relies upon the theory of "equal protection under the laws" this case is very simple. If Petitioner is treated as are all others by the law and authorities, there is no denial of equal protection under the laws. *Delta Airlines v. Coleman,* 131 SE 2d 768, certiorari denied, 84 S. Ct. 195.

Petitioner bases its claim to a tax exempt status as an institution of purely public charity. In Texas, the Constitution, statutes and courts have laid down very consistent and logical rules for determining whether or not a particular institution is exempt.

In Texas the Constitution must provide the Legislature with the authority to enumerate which activities are to be granted a tax exemption and the Legislature is prohibited from enlarging upon such exemption. *Dickison v. Woodmen of the World Life Ins. Co.,* 280 SW 2d 315, 317 (Tex. Civ. App. 1955) Refused. Article 8, Sec. 2 of the Texas Constitution provides that the Legislature may exempt from taxation property which is "owned and used exclusively by" institutions of "purely public charity." The *Dickison v. Woodmen of the World Life Ins. Co.,* supra, case made it clear that the Texas Legislature could exempt all institutions of purely public charity or exempt none at all or exempt only those which performed some specific charitable function. That case held:

> "Two things are apparent from a reading of this constitutional provision . . . the Legislature may restrict the exemption . . ." (280 SW 2d 315, 317).

The Texas Legislature chose to be restrictive and the lim-

itations so imposed are apparent from the language of Article 7150(7), R.C.S. Texas 1925:

> "Art. 7150. Exemption from taxation
>
> "7. Public charities. All buildings and personal property belonging to institutions of purely public charity, together with the lands belonging to and occupied by such institutions not leased or otherwise used with a view to profit, unless such rents and profits and all moneys and credits are appropriated by such institutions solely to sustain such institutions and for the benefit of the sick and disabled members and their families and the burial of the same, or for the maintenance of persons when unable to provide for themselves, whether such persons are members of such institutions or not. An institution of purely public charity under this article is one which dispenses its aid to its members and others in sickness or distress, or at death, without regard to poverty or riches of the recipient, also when the funds, property and assets of such institutions are placed and bound by its law to relieve, aid and administer in any way to the relief of its members when in want, sickness and distress, and provide homes for its helpless and dependent members and to educate and maintain the orphans of its deceased members or other persons."

Article 3, Sec. 56 of the Texas Constitution also prohibits the Legislature from passing any local or special law exempting property from taxation unless provided in the Constitution. All statutes granting tax exemptions must be strictly construed in Texas and this is a long standing rule first laid down by the Texas Supreme Court in *Morris v. Masons*, 5 SW 519, 520 (Tex. Sup. Ct. 1887), and followed ever since. The case of *Santa Rosa Infirmary v. City of San Antonio*, 259 SW 2d 926, 931 (Tex. Sup. Ct. 1924) put it very succinctly:

> "Exemptions from taxation are never favored, and in the construction or interpretation of a law extending exemption from taxation to any citizen or class of property all doubts are resolved against the exemption."

The Texas Supreme Court reiterated the reason for a strict construction in *River Oaks Garden Club v. City of Houston,* 370 SW 2d 851, 854 (Tex. Sup. Ct. 1963) which reads:

> "The reason of these rules would seem to be that it is but just and equitable that the property of all persons and associations of persons should bear the burdens of government in equal proportions; and hence it is to be presumed that the law makers did not intend to make an exception in favor of any class unless that intention be clearly expressed."

The test which the Courts have evolved to determine tax status is of three parts and these parts have also been interpreted. An institution must meet each part of the test or it fails to meet the necessary requirements. This test was first formulated in *City of Houston v. Scottish Rite Benevolent Association,* 230 SW 978, 981 (Tex. Sup. Ct. 1921), when the Court held that an institution to be a purely public charity must:

1. Make no gain or profit;

2. Accomplish ends wholly benevolent; and

3. Benefit persons indefinite in number and personality by preventing them, through absolute gratuity, from becoming burdens to society or the State.

Since we now have the test before us, let us examine Petitioner's operation to determine whether or not the test is met.

First, a purely public charity must "make no gain or profit." Petitioner fails to meet the first test because Petitioner has made a profit from a laundry operated by a business foreign to Petitioner's operation and the business was located on Petitioner's premises.

Also involved in the test is the "exclusive use" rule which is quoted from *David Graham Hall Foundation v. High-*

land Park Independent School District, 371 SW 2d 762, 764 (Tex. Civ. App. 1963) ref. N. R. E.:

> "The Constitutional requirement is two-fold: the property must be owned by the organization claiming the exemption; and it must be exclusively used by the organization, as distinguished from a partial use by it and a partial use by others whether the others pay rent or not."

The Court in the same case went on to say:

> "If rent is received from property belonging to a charitable institution, the property is not exempt from taxation though the rental revenues are used solely for the benefit of the charitable institution."

Since Petitioner allows other businesses to use its property for profitable pursuits and Petitioner makes a profit from this enterprise, there can be no exemption. Petitioner fails to "exclusively use" its property and does make a profit. Therefore, Petitioner is not exempt under the Texas Constitution, statute or case law.

Second, a purely public charity must "accomplish ends wholly benevolent." On Page 9 of Petitioner's Application, Petitioner admits it was never the purpose of the apartment complex to alleviate poverty as such. To accomplish ends wholly benevolent an institution of purely public charity must accomplish certain ends. In *River Oaks Garden Club v. City of Houston*, 370 SW 2d 851, 854 (Tex. Sup. Ct. 1963), the Court interpreted Article 7150(7) R. C. S. Texas 1925, to mean that:

> ". . . an organization cannot be an institution of purely public charity unless its funds, property and assets are pledged and used to provide for the basic needs of the sick, distressed and needy, whether the benefits be extended only to a small segment of society or to the public generally.
>
> ". . . included also in the concept that an institution of purely public charity is one which dispenses

> aid to the sick, the distressed and the needy by providing for their basic needs."

Petitioner has not shown it has accomplished ends wholly benevolent and admits that it was not organized with the intent of alleviating poverty. All Petitioner has shown is that it provides air conditioned housing to those who are able to pay the price of $72.50 to $76.50 monthly rental. Petitioner has never shown it benefited any persons but those who were able to take advantage of living in its apartments. Although Petitioner introduced testimony from several professors, it was not shown that their theories were applicable to the operation of Petitioner or relevant to any conditions in the City of Waco. Petitioner has failed to show a benefit to any person so there is no connection between the professors' theories and the actual end result of the apartment complex. Petitioner has been in operation for several years and any benefit should be recognizable. Since Petitioner did not introduce evidence of any benefit, it is apparent Petitioner has not accomplished ends which are wholly benevolent no matter what theory or theories it relies upon for a purported tax exempt status.

The Court of Civil Appeals held, "Methodist does not alleviate suffering caused by inadequate housing."

Texas is not alone in holding that providing housing at cost does not accomplish ends wholly benevolent. The Ohio Supreme Court in *Philada Home Fund v. Board of Tax Appeals*, 5 Ohio St. 2d 135, 214 NE 2d 431, 432 (Ohio Sup. 1966), has stated that property used for private housing is not exempt as a charitable purpose. The Nebraska Supreme Court in *County of Douglas v. OEA Senior Citizens, Inc.*, 172 Neb. 696, 707, 111 NW 2d 719, 725, stated:

> ". . . No definition of charity found in any available lexicon is sufficient upon which to declare what has been described as charitable, that is that the furnishing of low-cost housing at its real cost is charitable."

Petitioner failed to produce a single witness who would testify that the apartment complex improved his way of life.

Petitioner's request for exemption fails under Texas law because it was not shown that any wholly benevolent ends were accomplished.

Third, a purely public charity must "benefit persons indefinite in number and personality by preventing them, through absolute gratuity from becoming burdens to society or the state."

On Page 9 of Petitioner's Application, Petitioner admits that it does not benefit persons indefinite in numbers and personality by preventing them through *absolute gratuity* from becoming burdens to society or the State under Texas law. If an institution does not lessen a financial burden, which means the institution bears the burden of providing for the needs of the unfortunates which the society or the State would bear, that institution does not meet the third test under Texas law. Justice Norvell in *River Oaks Garden Club v. City of Houston*, 370 SW 2d 851, 857 (Tex. Sup. Ct. 1963), interpreted the third portion of the test to mean:

> ". . . the only charity which is eligible for legislative exemption is one whose activities will directly lessen a financial burden which would otherwise be borne by the taxpayer."

Petitioner completely fails the third portion of the test. A set rental is charged for the apartments and those who do not possess the necessary dollars are EVICTED. Petitioner has never provided housing as an absolute gratuity. It follows that Petitioner has never relieved society or the State of a financial burden. On the contrary, Petitioner has attempted to shift a greater burden to society and the State by asking that all municipal services be provided Petitioner free of charge. This means those not living in Petitioner's apartments will have to shoulder an extra load to make up for petitioner who asks for a tax exemption. Those

who Petitioner now purports to "aid" would be saddled with an extra burden of having to pay more taxes to make up for the taxes which the community would lose if Petitioner was granted a tax exemption.

Regardless of what theory Petitioner purports to espouse as a purpose for gaining a tax exemption, and Petitioner has regularly jumped from one to another, Petitioner's operation has always denied him an exemption under Texas law. Each time Petitioner's "purpose" changes, it becomes more vague and further from meriting a tax exemption under the law by which all institutions of purely public charity are judged.

Petitioner has not prevented a single person from becoming a burden to society or the State through absolute gratuity. Petitioner has not presented a scintilla of evidence that Petitioner has operated in a manner calculated to lessen the burden to society or the State. In Texas the rule of law has long been established that lofty purpose clauses do not make an institution one of purely public charity and tax exempt if the institution is not truly operating as should a tax exempt public charity. The Texas Supreme Court in *River Oaks Garden Club v. City of Houston*, 370 SW 2d 851, 856 (Tex. Sup. Ct. 1963), stated the rule:

> "No more may a charter declaration of a worthwhile purpose make an institution one of purely public charity if it is not one in fact."

The test is whether or not the property is actually used for charitable purposes under Texas law which becomes a question of fact: *Malone-Hogan Hospital Clinic Foundation, Inc. v. The City of Big Spring, et al*, 288 SW 2d 550, 554, 555 (Tex. Civ. App. 1956) ref. N.R.E.

Petitioner has failed to meet any portion of the three part test which is applied to all institutions seeking tax exemptions under Article 7150(7) R.C.S. Texas 1925; therefore, Petitioner cannot be classified as a tax exempt institution of purely public charity.

Petitioner's last feeble attempt to gain a tax exemption is based upon Amendment XIV, Section 1 of the Constitution of the United States and "National Policy."

The applicable principles regarding the relation of the Fourteenth Amendment to State tax laws are clear. As in the present case, when the dispute is between the State and one or more of its citizens, a wide discretion is left to the State. The only rule is that "the State must proceed upon a rational basis and may not resort to a classification that is palpably arbitrary." *Allied Stores of Ohio, Inc. v. Bowers,* 358 U.S. 522 (1959). It has been shown that the courts did not raise any additional barriers against Petitioner than all other institutions in the State of Texas must pass in order to be declared tax exempt institutions of purely public charity. Article 8, Sec. 2 of the Texas Constitution provided the Legislature with powers to declare certain types of public charities as exempt from ad valorem taxation. The Legislature enacted Article 7150(7) R.C.S. Texas 1925, under authority vested in it by the constitutional provision and the Courts have interpreted both Constitution and statute.

This Court, in *Allied Stores of Ohio, Inc. v. Bowers,* supra, stated the discretion allowed the States under the Fourteenth Amendment:

> " 'If the selection or classification is neither capricious nor arbitrary, and rests upon some reasonable consideration of difference or policy, there is no denial of the equal protection of the law."

The classification of Article 8, Sec. 2 of the Texas constitution and Article 7150(7) R.C.S. Texas 1925, as well as the strict construction of both by the Texas courts are reasonable. The Texas Supreme Court in the early case of *Morris v. Lone Star Chapter No. 6, Royal Arch Masons,* 5 SW 519, (Tex. Sup. Ct. 1887), supplied the reason for strictly limiting public charities when it stated:

> "The reason of these rules would seem to be that it is but just and equitable that the property of all

> persons and associations of persons should bear the burdens of government in equal proportion; and hence it is to be presumed that the law makers did not intend to make an exception in favor of any class unless that intention be clearly expressed."

The *Morris* case has been cited and followed by more than thirty subsequent tax cases in the State of Texas.

The limitations placed upon tax exemptions by the framers of the Texas Constitution and the Legislators are well explained by the *Morris* case. Such limitations are neither arbitrary nor capricious, but are most reasonable in this age when many groups and associations are seeking tax havens.

Petitioner's Fourteenth Amendment theory that it should be exempt because it claims others who do not meet the test are on the exempt roll leaves it in an untenable position because it amounts to no more than the spoiled child crying that "two wrongs make a right." As a matter of fact, Petitioner has not attempted to prove Respondents exempt institutions which do not meet the three part test nor is there a scintilla of evidence in the record which would show there are any institutions on the tax exempt rolls which do not meet the test. If one institution is being exempted though not meeting the requirements, Petitioner's remedy would be to enjoin the tax roll until that institution is placed on the tax roll. The availability of such a remedy in the State of Texas is clearly shown by the Court in the tax exemption case of *City of Houston v. Baker*, 178 SW 820, 824 (Tex. Civ. App. 1915) Ref.:

> ". . . there can be no question that equity may properly interfere to restrain the further operation by the city of the plan of taxation which is manifestly and admittedly unconstitutional and illegal."

There is no remedy which would grant an exemption just to even the score between Petitioner and the spurious tax free institution. The failure to tax one person has never been a legal excuse by which another can escape taxation and this was made clear by the Texas Supreme Court in the case of *City of Arlington v. Cannon*, 271 SW 2d 414, 416 (Tex. Sup. Ct. 1954):

> "'The government does not lose its right to taxes justly owing on one parcel of property, by reason of the failure of its officers, either negligently or designedly, to assess other property that is likewise taxable.'"

Respondents are not trenching upon the prerogatives of the National Government. Petitioner is a corporation incorporated under Texas laws and is not the National Government or an extension of it. Petitioner is not leasing from the National Government nor is it dealing with those who deal with the National Government. Therefore, neither *Phillips Chemical Company v. Dumas Independent School District*, 361 U.S. 376 (1960), nor *Moses Lake Homes v. Grant*, 365 U.S. 744 (1960), are in point. Neither purportedly following a goal set out as National Policy nor being insured by the government results in the same privity as existed in the two cases.

The States are not bound by "National Policy" because an administrative statement does not impress a legislative duty or burden on the State. If "National Policy" is to place a duty upon a State, it must be through some system of federal common law. The fact that there is no federal common law was effectively stated in the landmark case of *Erie R.R. Co. v. Tompkins*, 304 U.S. 64 (1938). Therefore, society and the State are not saddled with the burdens Petitioner attempts to throw on their backs, through a nebulous

"National Policy" theory. There being no duty for society or the State to assume the burden, Respondents cannot be held responsible for not assuming it.

WHEREFORE, Respondents respectfully pray that Petitioner's Application for Writ of Certiorari be denied.

Respectfully submitted,

CITY OF WACO:
Thomas R. Hunter
City Attorney

Don J. Rorschach
Assistant City Attorney

LA VEGA INDEPENDENT
SCHOOL DISTRICT:

V. H. McClintock
P. O. Box 4355
Waco, Texas 76705

BY William Earl Bracken Jr.
William Earl Bracken, Jr.
First Assistant City Attorney
P. O. Box 1370
Waco, Texas 76703
Attorney for Respondents

I certify that a copy of the foregoing Respondents' Brief has been deposited in the United States Mail addressed to Mr. David B. Kultgen, Beard & Kultgen, P. O. Box 529, Waco, Texas, and Mr. Thomas P. Brown, 1008 20th Street, NW, Washington, D. C., Attorneys of record for Petitioner, Methodist River Oaks Apartments, Inc.

William Earl Bracken Jr.
William Earl Bracken, Jr.
Attorney for Respondents

APPENDIX

APPENDIX A

Opinion of the Court of Civil Appeals of the Tenth Supreme Judicial District of Texas

This is an appeal from a judgment denying Methodist River Oaks Apartments, Inc. exemption from the payment of ad valorem taxes upon its property.

Methodist brought suit for a declaratory judgment that its apartments located in the City of Waco and La Vega School District be exempted from ad valorem taxes, on the ground that the Constitution and laws of Texas exempt from ad valorem taxes, properties of purely public charities, which are devoted to charitable purposes. Trial was before the court without a jury which, after hearing, entered judgment denying Methodist tax exemption as a charitable organization.

Methodist appeals on four points, contending the trial court erred in holding that its apartment complex was subject to ad valorem taxes.

Methodist is a non-profit corporation organized under the laws of Texas "to provide dwelling accommodations for families displaced from urban renewal areas," "and to assist further the provision of housing for moderate and low income families." It was formed by 4 negro Methodist churches. The members of the corporation are chosen by the churches which organized it; and no officer or member of the corporation has ever profited from its operation. The apartment complex contains 152 units; is a first-class facility; and is integrated. The units rent for $72.50 and $76.50 per month; one apartment has been furnished a tenant at a reduced rental, but no apartment has been provided rent free. The apartments are 79% occupied; are advertised in both Waco telephone book and in newspapers; are centrally air conditioned and heated; have 30 inch range; venetian blinds; prompt maintenance; central TV antenna; and 11.8 cubic foot refrigerators.

Other housing is available in Waco. In 1960 there were 2,036 vacant housing units in Waco. Maxey Apartments are operated by Public Housing Authority and rented for $23 to $71 per month and have 90% occupancy. Private housing is available in the area of Methodist at $50 per month.

Article 8, Section 2 of the Texas Constitution, Vernon's Ann. St., provides: "* * * the legislature may, by general laws, exempt from taxation property used for public purposes * * *."

And Article 7150 Vernon's Ann. Tex. Civ. St. provides:

> "The following property shall be exempt from taxation: * * * 7. Public charities.—All buildings belonging to institutions of purely public charity, together with the lands belonging to and occupied by such institutions not leased or otherwise used with a view to profit, * * *."

(1) Exemptions from taxation are never favored, and in construing laws exempting any organization, all doubts are resolved against the exemption. Morris v. Lone Star Chapter No. 6, Royal Arch Masons, 68 Tex. 698, 5 S. W. 519; Santa Rosa Infirmary v. City of San Antonio, Tex. Com. App. 259 S. W. 926.

(2) Whether an organization is a "purely charitable institution" so as to entitle its property to tax exemption is a question of fact; and the burden is on the organization claiming exemption from taxation to clearly prove it. Benevolent & Protective Order of Elks, etc. v. City of Houston, Tex. Civ. App., Er. Ref., 44 S. W.2d 488; Malone-Hogan Hosp., etc. v. City of Big Spring, Tex. Civ. App., (nre), 288 S. W.2d 550.

(3) An organization is not an "institution of purely public charity" within the constitutional and statutory tax exemption, unless the organization: 1) makes no gain or profit; 2) accomplishes ends wholly benevolent; 3) benefits persons, indefinite in numbers and in personalities, by preventing them, through absolute gratuity, from becoming

burdens to society and to the State. City of Houston v. Scottish Rite, 111 Tex. 191, 230 S. W. 978; River Oaks Garden Club v. City of Houston, Sup. Ct., 370 S. W.2d 851.

In River Oaks, supra, the court says:

> "'One ground upon which exemptions from taxation of charitable institutions * * * can be justified * * * is that they minister to human and social needs which the state itself might and does to a greater or less extent undertake to satisfy. The ultimate obligation of the state thus is discharged by the private charity. To that extent the state is relieved of its burden. * * *'"

(4) Applying the rules of law to the factual situation here involved, we think the trial court correctly denied Methodist tax exemption as a purely public charity.

Methodist does not alleviate suffering caused by inadequate housing, and it provides no service which the State would be obligated to assume. The record reflects many other sources of adequate housing at rates below those charged by Methodist. And if a family does not live in centrally air conditioned and heated housing, renting for $72.50 to $76.50 per month with 30 inch range, venetian blinds, prompt maintenance, centrally located TV antenna, and an 11.8 foot refrigerator, such family will not necessarily under the record here, become an obligation of the community or State.

All appellant's points and contentions are overruled. The judgment is correct. Affirmed.

FRANK G. McDONALD
Chief Justice

APPENDIX B

Text of Constitutional Provisions and Statutes Which the Case Involves

Amendment XIV, Section 1 of the Constitution of the United States which reads:

> "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

Article 3, Section 56 of the Texas Constitution which reads:

> "Sec. 56. The Legislature shall not, except as otherwise provided in this Constitution, pass any local or special law, authorizing:
>
> "The creation, extension or impairing of liens;
>
> "Regulating the affairs of counties, cities, towns, wards or school districts;
>
> "Changing the names of persons or places;
>
> "Changing the venue in civil or criminal cases;
>
> "Authorizing the laying out, opening, altering or maintaining of roads, highways, streets or alleys;
>
> "Relating to ferries or bridges, or incorporating ferry or bridge companies, except for the erection of bridges crossing streams which form boundaries between this and any other State;
>
> "Vacating roads, town plats, streets or alleys;

"Relating to cemeteries, grave-yards or public grounds not of the State;

"Authorizing the adoption or legitimation of children;

"Locating or changing county seats;

"Incorporating cities, towns or villages, or changing their charters;

"For the opening and conducting of elections, or fixing or changing the places of voting;

"Granting divorces;

"Creating offices, or prescribing the powers and duties of officers, in counties, cities, towns, election or school districts;

"Changing the law of descent or succession;

"Regulating the practice or jurisdiction of, or changing the rules of evidence in any judicial proceeding or inquiry before courts, justices of the peace, sheriffs, commissioners, arbitrators, or other tribunals, or providing or changing methods for the collection of debts, or the enforcing of judgments, or prescribing the effect of judicial sales of real estate;

"Regulating the fees, or extending the powers and duties of aldermen, justices of the peace, magistrates or constables;

"Regulating the management of public schools, the building or repairing of school houses, and the raising of money for such purposes;

"Fixing the rate of interest;

"Affecting the estates of minors, or persons under disability;

"Remitting fines, penalties and forfeitures, and refunding moneys legally paid into the treasury;

"Exempting property from taxation;

"Regulating labor, trade, mining and manufacturing;

"Declaring any named person of age;

"Extending the time for the assessment or collection of taxes, or otherwise relieving any assessor or collector of taxes from the due performance of his official duties, or his securities from liability;

"Giving effect to informal or invalid wills or deeds;

"Summoning or empannelling grand or petit juries;

"For limitation of civil or criminal actions;

"For incorporating railroads or other works of internal improvements;

"And in all other cases where a general law can be made applicable, no local or special law shall be enacted; provided, that nothing herein contained shall be construed to prohibit the Legislature from passing special laws for the preservation of the game and fish of this State in certain localities."

Article 8, Section 2 of the Texas Constitution which reads:

"Sec. 2. All occupation taxes shall be equal and uniform upon the same class of subjects within the limits of the authority levying the tax; but the legislature may, by general laws, exempt from taxation public property used for public purposes; actual places or (of) religious worship, also any property owned by a church or by a strictly religious society for the exclusive use as a dwelling place for the ministry of such church or religious society, and which yields no revenue whatever to such church or religious society; provided that such exemption shall not extend to more property than is reasonably necessary for a dwelling place and in no event more than one acre of land;

places of burial not held for private or corporate profit; all buildings used exclusively and owned by persons or associations of persons for school purposes and the necessary furniture of all schools and property used exclusively and reasonably necessary in conducting any association engaged in promoting the religious, educational and physical development of boys, girls, young men or young women operating under a State or National organization of like character; also the endowment funds of such institutions of learning and religion not used with a view to profit; and when the same are invested in bonds or mortgages, or in land or other property which has been and shall hereafter be bought in by such institutions under foreclosure sales made to satisfy or protect such bonds or mortgages, that such exemption of such land and property shall continue only for two years after the purchase of the same at such sale by such institutions and no longer, and institutions of purely public charity; and all laws exempting property from taxation other than the property above mentioned shall be null and void."

Article 7150 (7), R.C.S. Texas 1925, as amended by Acts of the Texas Legislature, 1961, 57th Legislature, page 1087, Chapter 487, Sec. 1, Vernon's Annotated Texas Civil Statutes which reads:

"The following property shall be exempt from taxation, to-wit:

"7. Public charities. All buildings and personal property belonging to institutions of purely public charity, together with the lands belonging to and occupied by such institutions not leased or otherwise used with a view to profit, unless such rents and profits and all moneys and credits are appropriated by such institutions solely to sustain such institutions and for the benefits of the sick and disabled members and their families and the burial of the same, or for the maintenance of persons when unable to provide for themselves, whether such persons are members of such institutions or not. An institution of purely public charity under this article is one which dispenses its aid to its members and others in sickness or distress, or at death, without regard to poverty or riches of the

recipient, also when the funds, property and assets of such institutions are placed and bound by its law to relieve, aid and administer in any way to the relief of its members when in want, sickness and distress, and provide homes for its helpless and dependent members and to educate and maintain the orphans of its deceased members or other persons."

LIBRARY
SUPREME COURT, U. S.
AUG 12 1967
JOHN F. DAVIS, CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1967

No. 291

METHODIST RIVER OAKS APARTMENTS, INC.,
Petitioner,

vs.

CITY OF WACO AND LA VEGA INDEPENDENT SCHOOL DISTRICT OF McLENNAN COUNTY, TEXAS,
Respondents.

REPLY TO RESPONDENTS' BRIEF

THOMAS P. BROWN, III
1008 20th Street, Northwest
Washington, D. C.
DAVID B. KULTGEN
BEARD & KULTGEN
P. O. Box 529
Waco, Texas 76703
Attorneys for Petitioner

R. L. Stephenson, Inc., 926 Cherry Street, Kansas City, Mo. 64106, HArrison 1-0939

TOPICAL INDEX

National Policy 1

Failure of Respondents to Meet the Issue 2

The Coin Laundry 3

Inaccuracies in Respondents' Statement of the Facts of the Case 3

Appendix A—Portions of the Testimony of Alfred McClung Lee, Arnold Rose and Seymour Leventman A1

Deposition Testimony of Alfred McClung Lee A1

Deposition Testimony of Arnold Rose A4

Deposition Testimony of Seymour Leventman A7

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1967

No. 291

METHODIST RIVER OAKS APARTMENTS, INC.,
Petitioner,

vs.

CITY OF WACO AND LA VEGA INDEPENDENT SCHOOL DISTRICT OF McLENNAN COUNTY, TEXAS,
Respondents.

REPLY TO RESPONDENTS' BRIEF

NATIONAL POLICY

Respondents assert that they are not bound by National Policy. (Respondents' Brief, page 15). The policy to which they have reference is the development of well planned, integrated residential neighborhoods. It was promulgated by the Congress in the Housing Act of 1949.

Their assertion points up the "special and important reasons" (to quote the language of this Court's Rule 19) for granting Certiorari here. This Court knows that the sub-

ject policy is highly unpopular in many areas of the country and with many segments of the population. If the States can discriminate against facilities designed to fulfill the policy by selective taxation, they can impede or prevent implementation of the objectives which Congress seeks to achieve. The prevention of any such impediment is certainly a special and important reason for granting the Writ sought here.

FAILURE OF RESPONDENTS TO MEET THE ISSUE

Petitioner's basic argument is that the opening up and integrating of a negro ghetto neighborhood is a charitable purpose. One would never discover this from reading Respondents' Brief or the opinion of the Texas Court of Civil Appeals. Both the Brief and the opinion ignore what Petitioner says and answer arguments which it does not make.

If the Texas Court had met Petitioner's argument and had espoused some test for tax exemption relevant to the purposes of the Texas statutes and Constitution, which Petitioner does not meet, Petitioner could not complain. Such a test would catch other fish in the same net. Petitioner would have to pay taxes, but so would others similarly situated.

But the Court chose to evade the argument that opening a ghetto is a charitable purpose. It espouses the same tests and cites the same cases which are described in Petitioner's Application for Writ of Certiorari. Then it fails to demonstrate any fallacy in Petitioner's argument.

Since Petitioner meets the tests for tax exemption announced by the Texas Courts, denial of exemption to its property is a denial of equal protection. This denial is no less a violation of Petitioner's constitutional rights because it is achieved by silence rather than by words.

THE COIN LAUNDRY

A coin laundry is operated on Petitioner's apartment premises to serve its tenants. Thirty percent of the proceeds of this operation go to Petitioner (the laundry operator retaining the balance). This thirty percent has been donated by it to the negro churches by which it was organized to be used by them for benevolent purposes. Respondents contend that this deprives Petitioner of its status as a purely public charity. This argument makes about as much sense as a contention that the operation of a pay telephone in a charity hospital deprives the hospital of its charitable status. At any rate, the presence of the coin laundries on the premises was not the basis for the decision of the Texas Court of Civil Appeals.

INACCURACIES IN RESPONDENTS' STATEMENT OF THE FACTS OF THE CASE

Respondents' statement of the material of the facts of the case contains inaccuracies. Among these are:

(a) On pages 4 and 5 of Respondents' Brief, it is asserted that there is "decent" and "integrated" housing available in immediate areas of Petitioner's apartment complex. The City Judge of the City of Waco, an employee of one of the Respondents, did testify that he had houses, which he considered to be decent, for rent in the immediate area. (St. of Facts pp. 79-84). There is no testimony that these are rented by anyone other than negroes. James J. Miller, a sociologist and executive director of Waco's local social planning agency, testified that the population in the census tract in which Petitioner's apartment complex is located is ninety-four percent negro, whereas the population in McLennan County, Texas, as a whole, is sixteen percent negro. He testified that forty percent of the hous-

ing in that census tract is classified as deteriorated and dilapidated. (St. of Facts pp. 32-38). F. E. Murrell, the Tax Collector of the City of Waco, testified that he knows of no other apartment house in Waco that seeks negro tenants. He also testified that none of the numerous apartment units (other than Petitioner's) built in Waco in the past five years is actually occupied by a single negro tenant. (St. of Facts pp. 67-68, p. 74). There is no testimony in the record which indicates the existence of any non-segregated housing in McLennan County, except Petitioner's apartment. A report, prepared under the supervision of witness Miller, shows a very high degree of residential segregation between negroes and whites in McLennan County, Texas. (St. of Facts, page 74).

(b) On page 5 of their Brief, Respondents say that Petitioner has not produced evidence which shows that Petitioner's apartment complex prevents persons from becoming burdens to society or the State. Of course, as a practical matter, opinion testimony of qualified expert witnesses is about the only kind of evidence available on questions such as these. In this connection, reference is made to portions of the testimony of Professors Alfred McClung Lee, Arnold Rose and Seymour Leventman, which is set out in Appendix "A", attached hereto.

Respectfully submitted,

THOMAS P. BROWN, III
1008 20th Street, Northwest
Washington, D. C.
DAVID B. KULTGEN
BEARD & KULTGEN
P. O. Box 529
Waco, Texas 76703

By .....
DAVID B. KULTGEN

APPENDIX A—PORTIONS OF THE TESTIMONY OF ALFRED McCLUNG LEE, ARNOLD ROSE AND SEYMOUR LEVENTMAN

ALFRED McCLUNG LEE, testifying by deposition:

"Q. State your name.

A. Alfred McClung Lee.

Q. State your address.

A. 100 Hemlock Road, Short Hills, New Jersey 07078.

Q. What is your profession or occupation?

A. I am Professor of Sociology in the Graduate Division and also in Brooklyn College of the City University of New York. I also serve as Chairman, Department of Sociology, Brooklyn College of the City University of New York.

Q. By whom are you employed?

A. The City University of New York.

Q. What training have you had for your profession or occupation? Please list schools attended, the years of such attendance, and degrees attained.

A. I studied at the University of Pittsburgh from 1923 to 1927, and received in 1927 the Bachelor of Arts degree. I majored there in Mathematics and English. I returned to the University of Pittsburgh in 1930 and studied there until 1931. My work then was exclusively in Sociology. In 1931, I received the Master of Arts degree. From then until 1933, I studied Sociology and Cultural Anthropology at Yale University, and in 1933 received the Doctor of Philosophy degree from Yale. In 1933-1934, I pursued post-doctoral studies and research in the Yale Graduate School, and I returned to Yale in 1937-38 to do further studies in the Yale Institute of Human Relations.

Q. Please list any professional writings of which you are the author.

A. I am the author or co-author of twelve sociological books and the author of forty-two sociological articles and booklets. The books are the following:

THE DAILY NEWSPAPER IN AMERICA (1937).
THE FINE ART OF PROPAGANDA (1939).
RACE RIOT (1943).
SOCIAL PROBLEMS IN AMERICA (1949, 1955).
PRINCIPLES OF SOCIOLOGY (1946, 1951, 1955, 1965).
READINGS IN SOCIOLOGY (1951, 1960).
HOW TO UNDERSTAND PROPAGANDA (1952).
PUBLIC OPINION AND PROPAGANDA (1954).
FRATERNITIES WITHOUT BROTHERHOOD (1955).
LA SOCIOLOGIA DELLE COMUNICAZIONI (1960).
CHE COS'E' LA PROPAGANDA (1961).
MARRIAGE AND THE FAMILY (1961).

My articles have appeared in all the leading sociological periodicals, including AMERICAN SOCIOLOGICAL REVIEW, AMERICAN JOURNAL OF SOCIOLOGY, SOCIAL FORCES, SOCIAL PROBLEMS, THE ANNALS, PUBLIC OPINION QUARTERLY, INTERNATIONAL JOURNAL OF OPINION AND ATTITUDE RESEARCH, JOURNAL OF SOCIAL ISSUES, SOCIOLOGY AND SOCIAL RESEARCH. Many of my articles have also appeared as chapters in books published by leading commercial and academic publishers.

Q. Please list any professional studies, surveys, or experiments in which you have participated in your professional capacity, describing generally the nature of the work and your part in it.

A. Special survey of the daily newspaper industry, 1931-1937; Yale University and University of Kansas. Done under my personal direction. Resulted in book listed above.

Special research project in Institute of Human Relations, Yale University, 1937-38. I edited three major publications in sociological research.

Public Affairs Specialist, The Twentieth Century Fund, New York, 1938-1940.

Executive Director, Institute for Propaganda Analysis, Inc., 1940-1942.

Research Consultant, Federal Communications Commission, 1941.

Research Consultant, U. S. Department of Justice (Antitrust), 1942-1944.

Marshall Field Grant for special research in mass communications, Wayne State University, 1947-1948.

Director, UNESCO Center for Social Research, Catholic University of the Sacred Heart, Milan, Italy, 1957-1958.

Senior Fulbright Grant for special research and research direction, University of Rome, Italy, 1960-1961.

Director, research project having to do with Irish-American culture, The City University of New York, sponsor. Funds also from the National Science Foundation, 1965-1967.

Q. Based on your professional training and/or experience, do you have an opinion as to the effect of inferior housing upon the occupants of such housing?

A. Yes.

Q. If you have answered question No. 8 "Yes", please state your opinion.

A. Inferior housing has a deleterious influence upon its inhabitants.

Q. Based upon your professional training and/or experience, do you have an opinion as to the effect of racially segregated housing on minority groups which find it necessary to occupy such housing?

A. Yes.

Q. If you have answered the foregoing question "Yes", would you please state your opinion?

A. Racially segregated housing gives its inhabitants a distorted impression of society. Children growing up under such conditions are especially damaged psychologically by such environment.

Q. Based on your professional training and/or experience, do you have an opinion as to whether the provision of decent, non-segregated housing to person to whom such housing would not be otherwise available is reasonably likely to prevent any substantial number of such persons from becoming burdens to society and to the state?

A. Yes.

Q. If you have answered the foregoing question "Yes", please state your opinion.

A. Granted that the non-segregated and decent housing is accompanied by a whole program of social improvement, it is reasonably likely to diminish the percentage of persons involved who might become burdens to society and to the state.

ARNOLD ROSE, testifying by deposition:

"Q. State your name.

A. Arnold M. Rose.

Q. State your address.

A. 178 Malcolm Avenue Southeast, Minneapolis 14.

Q. What is your profession or occupation?

A. Professor.

Q. By whom are you employed?

A. University of Minnesota.

Q. What training have you had in your profession or occupation? Please list schools attended, the years of such attendance, and degrees attained.

A. University of Chicago, 1935-38, B.A.; 1938, 1940, University of Chicago, M.A.; 1946, University of Chicago, Ph.D.

Q. Please list any professional writing of which you are the author.

A. Well, I have something like 180 publications. Perhaps those which are most directly pertinent to this inquiry would be the fact that I am assistant author of *An American Dilemma*, which the chief author is Professor Gunnar Merdal. I am the sole author of books called *The Negro in America*, *The Negroes' Morale*, and am the editor of *Assuring Freedom to the Free*, and of *Minority Problems*.

Q. Please list any professional studies, surveys, and/or experiments in which you have participated in your professional capacity, describing generally the nature of the work and your part in it.

A. Well, in addition to helping to write the above books, I have published a number of specific studies. One is called "Inconsistencies in Attitudes Towards Negro Housing", *Social Problems*, Volume 8, Spring 1961, Pages 286-292; "Neighborhood Reactions to Isolated Negro Residents", *American Sociological Review*, Volume 18, October 1953, Pages 497-507.

Q. Based on your professional training and/or experience, do you have an opinion as to the effect of inferior housing upon the occupants of such housing?

A. Yes. I know of a number of studies done by other people which refers to this and also based upon personal interviews in areas of poor housing I would say that people who live in inferior housing because of discrimination, especially those who are able to afford better housing but cannot get it because of refusal of owners, landlords, and others to permit them to have it, feel that society regards them as inferiors and is depriving them what they—under professed American ideals of fair play —are being denied. Generally speaking, unpleasant surroundings create negative self-feelings and provide one negative influence in carrying out one's daily work.

Q. If you have answered Question No. 8, "Yes", please state your opinion.

A. I have already stated it.

Q. Based on your professional training and/or experience, do you have an opinion as to the effect of racially segregated housing on minority groups which find it necessary to occupy such housing?

A. Yes.

Q. If you have answered the foregoing question, "Yes", would you please state your opinion.

A. People in racially segregated housing understand exactly what other people mean who enforce their racial segregation—that is, they do not want to associate with them—they feel excluded, and in many ways beyond housing are excluded because of their housing segregation, from many aspects of life. Children in segregated housing especially raise questions about why they are segregated,

worry about the rest of the society's exclusion of them, feel uneasy in the presence of those responsible for the segregation, and sometimes develop aggressive feelings towards those who are insulting and endangering them.

Q. Based on your professional training and/or experience, do you have an opinion as to whether the provision of decent, non-segregated housing to person to whom such housing would not be otherwise available is reasonably likely to prevent any substantial number of such persons from becoming burdens to society and to the State?

A. This is difficult to say. I don't know of any solid studies to back up an opinion here as I could for the above questions, but one might make some reasonable inferences based upon limited facts.

I have already referred to the fact that Negro children in segregated housing feel a sense of insult and harm because of their segregation, and that they sometimes become aggressive toward those responsible for the segregation, which they see as the white world in general. This aggression sometimes takes the form of acts of delinquency and crime. I don't say that the sole cause of delinquency and crime among Negroes is due to segregation, but I do say that it is likely that the higher proportion of crimes among Negroes involving senseless destruction to the property is likely to be due in large part to this factor.

Also, as I stated earlier, being continually surrounded by depressing physical environment is an important factor in causing deterioration of performance on the job and in other activities of daily life. Poor performance for people with low skill levels generally raises the relief load. I have seen how people move to bright, clean, new housing improve their morals so significantly as to perform much better on their jobs, and to be proud of their housing helps them to participate with more self confidence in community activities, which in turn diminishes the chances of their getting into non-socially acceptable behavior.

SEYMOUR LEVENTMAN, testifying by deposition:

"Q. State your name.

A. Seymour Leventman.

Q. State your address.

A. 7110 McCallum Street, Philadelphia.

Q. What is your profession or occupation?

A. Professor of Sociology.

Q. By whom are you employed?

A. University of Pennsylvania.

Q. What training have you had for your profession or occupation? Please list schools attended, the years of such attendance, and degrees attained.

A. Bachelor of Arts degree, Washington State College, 1951. Master's degree in Sociology, Indiana University, 1953. Ph.D. in Sociology, University of Minnesota, 1958.

Q. Please list any professional writings of which you are the author.

A. "Children of the Gilded Ghetto", Yale University Press, 1961.

"Minority Group Leadership", in a book called "Mass Society in Crisis", MacMillan, 1964.

A paper delivered at the annual convention of the American Sociological Association, Chicago, 1965, entitled "Minority Group Leadership in Transition".

Q. Please list any professional studies, surveys, or experiments in which you have participated in your professional capacity, describing generally the nature of the work and your part in it.

A. I am currently engaged in the study of the Negro community of Philadelphia, comparing different class levels of Negroes as to their social characteristics and responses to minority status in American society.

Q. Based on your professional training and/or experience, do you have an opinion as to the effect of inferior housing upon the occupants of such housing?

A. Yes.

Q. If you have answered question No. 8 "Yes", please state your opinion.

A. My opinion is that the evidence is overwhelming that occupants of such housing, who are generally Negroes, particularly in northern cities, live in the worst housing

in those cities, as measured by the age of the housing, its deterioration, the income levels of people living in those areas, and general overcrowdedness and density of population.

Under such housing conditions there is generally multiple use of toilet and water facilities, inadequate heating and ventilation, and crowded sleeping quarters, which increases the rate of acute respiratory infections and infectious childhood diseases.

Poor facilities for the storage of food and inadequate washing facilities cause various skin and digestive diseases.

Crowded, poorly equipped kitchens, poor electrical connections, and badly lighted and unstable stairs increase the rate of home accidents and fires.

The street itself is not much safer, since, for example, a study in Harlem, in New York City, showed that far more children and young adults are killed by cars in Harlem than in the rest of the city.

Perhaps the best single index of a community's general health is its infant mortality rate. Again, for Harlem, this rate in 1961 was 45.2 per one thousand live births, compared to 25.7 for New York City.

In Cleveland the infant mortality rate for Negroes is double that for the rest of the city.

Many factors contribute to this condition, undoubtedly including poor housing conditions and malnutrition, and inadequate health care, but besides all of those perhaps the main psychological cause is one of demoralization and a sense of inferiority produced by having to live where flies and maggots breed, where plumbing is stopped up and not repaired, where rats bite helpless infants, and where the conditions of life are generally brutal and inhuman.

Q. Based on your professional training and/or experience, do you have an opinion as to the effect of racially segregated housing on minority groups which find it necessary to occupy such housing?

A. Yes.

Q. If you have answered the foregoing question "Yes", would you please state your opinion?

A. In the light of modern psychological and sociological evidence it is quite clear that "separate but equal" is no longer equal, in the sense that even where physical facilities are the same (though they rarely actually are) there is a psychological difference which the inhabitants of the segregated housing are made to feel, simply by virtue of being forced to live apart from the rest of the community and the rest of society.

This is particularly the case with housing, since in modern society housing is perhaps more than ever a concrete symbol of what the person thinks he is worth and what others think he is worth.

At the very least, then, good housing improves health, lifts morale, and thereby helps to generate an eagerness for change and improvement.

With all the present-day concern with problems of raising the levels of motivation and aspirations the evidence is quite clear that better and unsegregated housing will stimulate further hope and demands for a greater identification with the American middle class society. Housing, after all, is no abstract social and political problem, but an extension of a man's personality.

If a person has to identify with a rat-infested basement his sense of personal inadequacy and inferiority, already aggravated by the job discrimination and other forms of humiliation, is reinforced by the physical reality around him. If his home is clean and decent, and perhaps even in some way beautiful, his sense of self is also thereby stronger.

Q. Based on your professional training and/or experience, do you have an opinion as to whether the provision of decent, non-segregated housing to persons to whom such housing would not be otherwise available is reasonably likely to prevent any substantial number of such persons from becoming burdens to society and to the state?

A. Yes.

Q. If you have answered the foregoing question "Yes", please state your opinion.

A. My opinion is that the basic, the root of the problem of substandard, segregated housing is job segregation and concentration in menial, low-income occupations. I have already stated that how a person lives is somehow an extension of his personal self-worth. Undoubtedly this is tied up with his total life situation which, of course, would also include decent and steady wages, including steady employment.

The desire to achieve such an occupational and economic standing clearly is a product of motivation and ambition, which in turn reflects and is tied up with good and unsegregated housing.

We have some confirmation of these statements in the previous experience of other minority groups who when they moved from the ghettos improved not just their economic and social positions but also their self-conceptions and sense of personal dignity and worth so that, obviously, these problems are closely interwoven and mutually reinforcing.

If, then, a group or community desires to keep supporting these ghettos and their inhabitants through various dependency programs, which are an increasing burden, especially to urban communities, then I would say keep these minority peoples segregated. But if a community wishes to not just lift the burden, the economic and social burden of supporting these segregated peoples, but if it also wishes to improve its image as an enlightened group, they will provide decent, non-segregated housing.

I would emphasize again the non-segregated aspect, keeping in mind the serious psychological price paid in a sense of inferiority because of being segregated.

Finally, to raise one group's standard of living is to raise the standard for all, especially nowadays when groups are so interdependent.

Also, to erase the blight of slums and segregated housing would certainly reflect favorably on the enlightened leadership of a community, causing it to attract outside business, educational and other interests.

But perhaps the basic reason for finally doing away with segregated housing is because it is morally right to do so.